

# AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 159.5, the Department of Agriculture and Land Stewardship amends Chapter 1, “Administration,” and adopts new Chapter 13, “Renewable Fuel Infrastructure Board—Organization,” Chapter 14, “Renewable Fuel Infrastructure Program For Retail Motor Fuel Sites,” Chapter 15, “Renewable Fuel Infrastructure Program For Biodiesel Terminal Grants,” and Chapter 16, “Renewable Fuel Infrastructure Program Administration,” Iowa Administrative Code.

The amendments carry out the transfer of the rules for the Renewable Fuel Infrastructure Board from the Iowa Department of Economic Development to the Department of Agriculture and Land Stewardship authorized by 2011 Iowa Acts, Senate File 531, division VII. The Department of Agriculture and Land Stewardship will provide for the administration of the related programs for retail motor fuel sites, biodiesel terminal grants, and the renewable fuel infrastructure fund.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable. Timely adoption is necessary for the amendments to be in effect when the provisions of 2011 Iowa Acts, Senate File 531, become effective.

Pursuant to Iowa Code section 17A.5(2)“b”(1), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 2011, in accordance with 2011 Iowa Acts, Senate File 531, section 49.

Notice of Intended Action for these amendments is also published herein as **ARC 9583B** to allow for public comment.

The amendments are subject to the Department’s general waiver provision.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 15G and 159 and 2011 Iowa Acts, Senate File 531.

These amendments will become effective July 1, 2011.

The following amendments are adopted.

ITEM 1. Amend paragraph **1.2(4)“a”** as follows:

*a. Agricultural marketing.* This unit works with the various boards of Iowa agricultural organizations to assist and support their respective marketing efforts. The unit also seeks new opportunities to assist Iowa’s private firms to find markets for their products. Additionally, the unit provides Iowa livestock and grain producers with essential market information on a timely basis through the market news reporting service, a joint effort with the United States Department of Agriculture. Additionally, the unit assists the renewable fuel infrastructure board, provides for the administration of the renewable fuel infrastructure programs, and provides for the management of the renewable fuel infrastructure fund.

ITEM 2. Adopt the following **new** 21—Chapter 13:

### CHAPTER 13

#### RENEWABLE FUEL INFRASTRUCTURE BOARD—ORGANIZATION

**21—13.1(84GA,SF531) Definitions.** As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 15G.201 as amended by 2011 Iowa Acts, Senate File 531, shall apply to this chapter and to 21—Chapters 14, 15, and 16. The following definitions shall also apply:

“*Agreement*” means the cost-share agreement executed by the department after approval of the grant by the board.

“*Applicant*” means a person, as defined in this rule, who owns or operates a site.

“*Biodiesel*,” for the purpose of this rule, must be at least B99.

“*Biodiesel blended fuel*,” as defined in Iowa Code section 214A.1, means a blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel

component. For the purpose of these rules, biodiesel blended fuel must contain at least 2 percent biodiesel at a terminal site and at least 1 percent at a retail site.

“*Biofuel*” means ethanol or biodiesel as defined in Iowa Code section 214A.1.

“*Blender pump*,” for the purpose of these rules, means blending biofuel. When blending ethanol, the pump must dispense E-85 gasoline at all times.

“*Board*” means the renewable fuel infrastructure board established by Iowa Code section 15G.202 as amended by 2011 Iowa Acts, Senate File 531.

“*Checklist*” or “*IDNR checklist*” means the most recent version of the Underground Storage Tank System Checklist for Equipment Compatibility with E-Blend Fuels (greater than 10 percent by volume) issued by the Iowa department of natural resources.

“*Grant*” or “*cost-share grant*” means moneys awarded by the board on a cost-share basis from the renewable fuel infrastructure fund created by Iowa Code chapter 15G to help pay for a project.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“*Project*” means the installation of equipment for motor fuel storage, dispensing and distribution of E-85 gasoline, biodiesel or biodiesel blend.

“*Rack*” means a metered motor fuel, special fuel or renewable fuel loading facility with the capacity to pump fuel at a rate of at least 100 gallons per minute (100 gpm); whether from an overhead, lateral, or underneath position, into a transportation vessel for further delivery.

“*Renewable fuel*,” as defined in Iowa Code section 214A.1, means a combustible liquid derived from grain starch, oilseed, animal fat, or other biomass; or produced from a biogas source, including any nonfossilized decaying organic matter which is capable of powering machinery, including but not limited to an engine or power plant. Renewable fuel includes but is not limited to biofuel, ethanol blended gasoline, or biodiesel blended fuel meeting the standards provided in Iowa Code section 214A.2.

“*Retail*” means offered for sale to the public for final consumption.

“*Retail motor fuel site*” means a site at which motor fuel is offered for sale to the public for final consumption. A retail motor fuel site may include a tank vehicle or transport.

“*Tank vehicle*” means a motor vehicle designed to transport liquid or gaseous materials within a tank having a rated capacity of 1,001 or more gallons either permanently or temporarily attached to the vehicle or chassis.

## **21—13.2(84GA,SF531) Renewable fuel infrastructure board.**

**13.2(1) Duties.** The board shall make awards for renewable fuel infrastructure programs and perform other functions as necessary.

**13.2(2) Board structure.** The board shall consist of 11 voting members appointed for five-year terms by the governor. The board shall annually elect a chairperson, on a rotating basis, from among its members. Six voting members shall constitute a quorum. An affirmative vote of a majority of voting members, excluding any member who has a conflict of interest, is necessary for the board to take substantive action.

**13.2(3) Staff.** Staff assistance shall be provided through the department. The department will market the renewable fuel infrastructure program throughout the state.

**13.2(4) Meetings.** Board meetings will generally be held by telephone or at the department’s offices. All meetings shall comply with Iowa Code chapter 21.

These rules are intended to implement Iowa Code section 15G.202 and 2011 Iowa Acts, Senate File 531.

ITEM 3. Adopt the following **new** 21—Chapter 14:

### **CHAPTER 14 RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR RETAIL MOTOR FUEL SITES**

**21—14.1(84GA,SF531) Purpose.** The purpose of the renewable fuel infrastructure program is to install, replace and convert infrastructure to store, blend, and dispense renewable fuels at a retail fuel site.

**21—14.2(84GA,SF531) Eligible applicants.** To be eligible to receive a retail motor fuel site infrastructure grant, an applicant shall:

**14.2(1)** Be an owner or operator of a retail motor fuel site.

**14.2(2)** Submit an application to the department in form and content acceptable to the department and the board.

**14.2(3)** Meet the following eligibility requirements established by the board:

*a.* The fuel storage and dispensing infrastructure may include either an aboveground or belowground storage tank and ancillary equipment.

*b.* The fuel storage tank may be on a tank vehicle or transport if regularly parked overnight in Iowa.

*c.* The storage tank must, however, be used exclusively for retail delivery to the final consumer.

*d.* If a tank has multiple compartments, at least one of the compartments must be used exclusively for the storage and dispensing of E-85 gasoline, biodiesel or biodiesel blended fuel at retail. The compartment used exclusively for the storage of E-85 gasoline, biodiesel or biodiesel blended fuel is considered the tank for purposes of this program.

*e.* The tank and ancillary equipment must be approved for E-85 gasoline, biodiesel or biodiesel blended fuel use by either the Iowa department of natural resources or the state fire marshal, as evidenced by the most recent IDNR checklist.

*f.* The dispenser must be described by type and model in a written statement by the manufacturer of the dispenser. The manufacturer's written statement must be signed by a responsible official on behalf of the manufacturer and must be provided either to the applicant or to the Iowa department of natural resources or the state fire marshal. If provided to the applicant, the statement must be kept on file on the premises of the applicant for the five-year term of the agreement. The written statement must state that:

(1) The dispenser is, in the opinion of the manufacturer, not incompatible with E-85 gasoline; and

(2) The manufacturer has initiated the process of applying to an independent testing laboratory for listing of the equipment used in dispensing E-85 gasoline.

*g.* Conversion kits. If a UL-listed E-85 dispenser conversion kit is used, it must be approved by the state fire marshal to be eligible for the E-85 grant.

These rules are intended to implement Iowa Code section 15G.203 and 2011 Iowa Acts, Senate File 531.

ITEM 4. Adopt the following new 21—Chapter 15:

#### CHAPTER 15

#### RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR BIODIESEL TERMINAL GRANTS

**21—15.1(84GA,SF531) Purpose.** The purpose of the renewable fuel infrastructure program for biodiesel terminal grants is to provide grants to a terminal facility which stores, blends, or distributes biodiesel fuel, including B2 through B98 and B99/B100, to dealers and retailers.

**21—15.2(84GA,SF531) Eligible applicants.** To be eligible to receive a biodiesel terminal grant, an applicant shall:

**15.2(1)** Be an owner or operator of a biodiesel terminal.

**15.2(2)** Submit an application to the department in form and content acceptable to the department and the board.

**15.2(3)** Meet the following eligibility requirements established by the board:

*a.* The terminal must not be a retail motor fuel site.

*b.* The terminal must not be a facility at which fuel or blend stocks are used in the manufacture of products other than motor fuel and from which no fuel is removed.

c. The terminal must have at least one storage tank of at least a 10,000-gallon capacity, used exclusively for or dedicated exclusively to the storage of biodiesel fuel. The terminal may also have storage for one or more biodiesel blends. The terminal must have facilities for the dispensing of either biodiesel, biodiesel blends, or both.

d. The dispensing of motor fuel at the terminal must be done at a rack in excess of 100 gpm pumping capacity.

These rules are intended to implement Iowa Code section 15G.204 and 2011 Iowa Acts, Senate File 531.

ITEM 5. Adopt the following new 21—Chapter 16:

#### CHAPTER 16

#### RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION

**21—16.1(84GA,SF531) Allocation of awards by congressional district.** The board shall use the boundaries of the state's congressional districts and shall prorate and equally distribute the amount available each fiscal year for each district. The board shall have at its discretion a prorated amount (up to \$500,000) to distribute to any congressional district. On April 1 of each year, if funds allocated to a district have not been committed, the unobligated balance shall revert to the reserve fund and be available for other projects approved by the board.

**21—16.2(84GA,SF531) Form of award available; award amount.**

**16.2(1) *Form of award.*** Eligible applicants may apply for financial incentives on a cost-share basis. Funding shall be available in the form of a grant.

**16.2(2) *Prospective grants for projects not commenced.*** A grant may be awarded for an eligible project not yet commenced.

**16.2(3) *Amount of award.***

**a. *Retail award site.***

(1) Three-year cost-share agreement for a retail site. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.

(2) Five-year cost-share agreement for a retail site. The maximum award amount is 70 percent of the actual cost of making the improvements or \$50,000, whichever is less.

(3) Supplemental financial incentives. A person may be granted supplemental financial incentives as an amendment to the cost-share agreement.

1. Supplemental award for Underwriters Laboratories upgrade. The purpose of an award for Underwriters Laboratories (UL) is to upgrade to UL-certified dispensers, blender pumps and dispensing infrastructure, UL-approved conversion kits and approved and insurable installation projects. The maximum amount available as a supplemental financial incentive is 75 percent of the actual cost of making the improvements or \$30,000, whichever is less. The dispenser can be listed by an independent certified testing laboratory or Underwriters Laboratories (UL) as compatible with ethanol blended gasoline classified as E-9 or higher.

2. Supplemental award for additional tank and associated infrastructure. A person may request a supplemental financial incentive for tank and associated infrastructure, as an amendment to the subsequent cost-share agreement(s). The purpose of an award for an additional tank(s) and associated infrastructure is to accelerate the installation of an additional tank(s) and associated infrastructure at an additional retail motor fuel site after an initial grant award is provided. To be eligible, the initial grant award must be awarded to the person on or after May 12, 2008. The maximum award amount available as a supplemental financial incentive is \$6,000 per supplemental site. The person is limited to four supplemental financial incentive awards within the 12-month period following the completion of the initial retail motor fuel site project.

**b. *Terminal facility award for biodiesel B2 through B98 and B99/B100 for year-round distribution.***

(1) Biodiesel fuel B2 through B98.

1. Duration. The duration of the cost-share agreement shall be five years.

2. Maximum award. The maximum award amount is 50 percent of the actual cost of making the improvements or \$50,000, whichever is less.

(2) Biodiesel fuel B99/B100 for year-round distribution.

1. Duration. The duration of a cost-share agreement is five years.

2. Maximum award amount. The maximum award amount is 50 percent of the actual cost of making the improvements or \$100,000, whichever is less.

3. Application acceptance begins January 1, 2009. Grant applications for B99/B100 projects will be accepted beginning January 1, 2009.

4. Lifetime cap amount. The maximum or lifetime cap for B99/B100 biodiesel terminal grants is \$800,000 per person.

c. *Tank vehicle.*

(1) December 31, 2008, deadline. A tank vehicle application must be postmarked no later than December 31, 2008, to be eligible.

(2) Duration. The duration of the cost-share agreement is three years. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.

(3) Limitation on number of grants. A person may receive one grant for one tank vehicle used to store and dispense E-85 gasoline and one grant for one tank vehicle used to store and dispense biodiesel or biodiesel blend. If a person received an award for a tank vehicle(s) prior to May 12, 2008, that person is eligible to apply for an additional tank vehicle.

**16.2(4) *Time of payment.*** The grant shall be paid only upon timely completion of the project and upon the board's receipt of records satisfying the board of the applicant's qualifying expenditures.

a. The applicant must deliver to the board prior to payment a certificate of completion on the board's form.

b. The certificate of completion must include the IDNR checklist completed and signed by an Iowa-certified installer showing review and approval of the completed project.

c. The certificate of completion must be accompanied by proof of financial responsibility as necessary to meet federal requirements for underground storage tank installation.

**16.2(5) *Deadline for completion.*** The project must be completed within eight months of the board's approval of the award. An extension may be granted by the board upon application showing demonstrable progress toward completion.

**16.2(6) *Multiple awards for multiple fuel types.***

a. *At a single fuel site.* A person must file a separate application form for an ethanol infrastructure improvement grant and a biodiesel infrastructure improvement grant, respectively, at a single fuel site. The infrastructure board may approve multiple improvements to the same retail motor fuel site for the full amount available for ethanol infrastructure and biodiesel infrastructure. Applications for ethanol and biodiesel infrastructure improvements must be written in separate cost-share agreements.

b. *At multiple fuel sites.* A person may receive multiple grants as described in paragraph 16.2(6) "a" for more than one motor fuel site. When considering multiple grants for multiple fuel sites, the infrastructure board will make awards fairly and properly among applicants and geographic areas.

**16.2(7) *Exhaustion of funds.*** In the event funding is exhausted at the end of the fiscal year or June 30, 2012, the board shall approve remaining applications based on criteria implemented by the board.

## **21—16.3(84GA,SF531) Application process.**

**16.3(1) *Application procedures.***

a. Applications may be submitted at any time, but will be reviewed on a first-come, first-served basis as established by the date stamp on the filed application.

b. Applications shall be submitted to: Renewable Fuel Infrastructure Board, Iowa Department of Agriculture and Land Stewardship, 502 East Ninth Street, Des Moines, Iowa 50309. Application forms and instructions are available at this address.

**16.3(2) *Contents of application.***

a. Statutory requirements. An application shall include the information required in Iowa Code section 15G.203.

- b. Other information required by the board:
  - (1) Assurance that the project will be for the purpose of installing, replacing, or converting equipment for the storage or dispensing of the renewable fuel under consideration.
  - (2) Assurance that all equipment funded by the grant is designed and will be used exclusively to store or dispense E-85 gasoline, biodiesel or biodiesel blended fuel, respectively, for the period specified in the agreement.
  - (3) An IDNR checklist indicating the current status of the site.
  - (4) Assurance of compliance with any and all federal requirements for financial responsibility.
  - (5) Assurance of compliance with any and all state and federal laws and regulations.
  - (6) A cost proposal from an Iowa-licensed underground storage tank installer (for underground storage projects) and a qualified aboveground storage tank installer (for aboveground storage projects).
  - (7) Documentation of initiation of the process of applying to an independent laboratory and the manufacturer's written statement that the dispenser is "not incompatible."

**21—16.4(84GA,SF531) Review process.**

**16.4(1)** The underground storage tank fund board has chosen not to review the applications. The renewable fuel infrastructure board will review an application for final approval or disapproval. The renewable fuel infrastructure board shall determine the amount of financial incentives to be awarded to an applicant.

**16.4(2)** Completed applications, including supporting documentation of meeting eligibility requirements, will be reviewed on a first-come, first-served basis. If the amount of funding requests exceeds available funds, the board shall evaluate applications based upon criteria that include, but are not limited to, the following:

- a. Submittal of a completed application, including supporting documentation.
- b. Location factors such as demographics, proximity to major transportation corridors, and proximity to existing renewable fuel retail and storage facilities.
- c. Projected annual sales volume.
- d. Other sources of funding.
- e. Previous grants awarded.

**21—16.5(84GA,SF531) Contract administration.**

**16.5(1)** *Notice of award.* The department shall notify approved applicants in writing of the board's award of grants, including any conditions and terms of the approval.

**16.5(2)** *Contract required.* The board shall direct the department to prepare a cost-share agreement which shall include terms and conditions of the grant established by the board. The agreement will:

- a. Describe the project in sufficient detail to demonstrate the eligibility of the project.
- b. State the total cost of the project expressed in a project budget included in sufficient detail to meet the requirements of the infrastructure board.
- c. State the project completion deadline.
- d. State the project completion requirements which are preconditions for payment of the grant by the board.
- e. Recite the penalty for the storage or dispensing of motor fuel other than the type of renewable fuel for which the grant was awarded.
  - (1) Awards for projects under construction or not yet started. The three- or five-year obligation to continue dispensing renewable fuel begins on the date the project is completed.
  - (2) Awards for projects already completed. The three- or five-year obligation to continue dispensing renewable fuel begins on the date the department issues the first disbursement of grant funds, not on the date of project completion.
- f. Be amended to include a supplemental financial incentive, if a supplemental financial incentive is awarded by the board.

**16.5(3)** *Repayment penalty for nonexclusive renewable fuel use.* In the absence of a waiver from the board, the department may impose a 25 percent penalty due to a grant recipient's use of infrastructure

equipment for which a grant was awarded, for the storage or dispensing, within the time frame stated in the agreement, of motor fuel other than the type of renewable fuel for which the grant was awarded.

**16.5(4) *Repayment or board waiver.*** A grant recipient may not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1) the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded including a 25 percent penalty.

**16.5(5) *Waiver criteria.*** The board may waive repayment of grant funds plus the 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board will consider waiver requests under the following circumstances:

*a. Permanent waiver.*

(1) Waiver due to demonstration of good cause (no repayment and no 25 percent penalty). A grant recipient may request a permanent waiver during the time period in which a cost-share grant agreement is in effect if the grant recipient can demonstrate good cause for failure to continue using the approved renewable fuel. “Good cause” includes, but is not limited to, events such as the following:

1. Permanent business closure due to bankruptcy.
2. Permanent closure of underground or aboveground storage tanks.

(2) Waiver due to demonstration of financial hardship (repayment on a sliding scale and no 25 percent penalty). A grant recipient may seek a permanent waiver of exclusive use of the approved renewable fuel during the time period in which a cost-share agreement is in effect due to financial hardship. The grant recipient must demonstrate that continuing to dispense the renewable fuel at a project site will cause a financial hardship. A request for waiver due to financial hardship shall include documentation to show a “good faith” effort to market the fuel, specifically the most recent six-month history of gallons of approved renewable fuel sold by month, marketing/advertising efforts, retail price comparison of E-85 to E-10 (or regular gasoline) or of biodiesel to regular diesel. If a waiver is granted, the 25 percent penalty will not be assessed, but the grant funds will be repaid as follows:

1. Three-year cost-share agreement: Months 1 through 11 of the cost-share agreement, 100 percent of grant amount. Months 12 through 36 of cost-share agreement, 4 percent of grant amount for each month remaining on the cost-share agreement.

2. Five-year cost-share agreement: Months 1 through 10 of the cost-share agreement, 100 percent of grant amount. Months 11 through 60 of the cost-share agreement, 2 percent of grant amount for each month remaining on the cost-share agreement.

*b. Temporary waiver (temporary suspension of repayment and 25 percent penalty).* A grant recipient may request a temporary suspension of the obligation to use only the approved renewable fuel and a temporary waiver of the repayment plus penalty requirement. A request for a temporary waiver, or an extension of a temporary waiver, will only be considered by the board if the recipient can document to the board’s satisfaction that market forces are not allowing for advantageous sales of the approved renewable fuel. A grant recipient shall submit documentation of the previous six-month sales history and marketing attempts to substantiate the grant recipient’s request for a temporary waiver. The following conditions apply to requests for a temporary waiver:

(1) A temporary waiver will not be granted during the first six months of a cost-share agreement.

(2) A temporary waiver will not shorten the grant recipient’s obligation to use the infrastructure to store and dispense the approved renewable fuel for a minimum of three years or five years. If the board approves a temporary waiver, the duration of the cost-share agreement will be extended by the length of the approved waiver period.

(3) A grant recipient may request a temporary waiver of up to six months. The board may approve one or more six-month waivers, provided the total cumulative time period allowed for temporary waivers shall not exceed two years.

(4) If a state executive order suspending the Iowa Renewable Fuel Standard (RFS) schedule is issued, the board may decide to grant a temporary waiver to all grant recipients. The board will establish the duration of the waiver and provide written notice to all grant recipients of the board’s action. When the board determines that a temporary waiver is necessary due to suspension of the Iowa RFS schedule,

the three-year or five-year duration of the cost-share agreement will not be extended by the length of the temporary waiver.

These rules are intended to implement Iowa Code sections 15G.201, 15G.202 and 15G.205 as amended by 2011 Iowa Acts, Senate File 531, and Iowa Code sections 15G.203 and 15G.204.

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